



MAY 17 2002

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In re Application of  
BUICAN, Tudor N.  
Application No. 09/623,954  
PCT No.: PCT/US99/05586  
Int. Filing Date: 16 March 1999  
Priority Date: 16 March 1998  
Attorney Docket No.: 1074-038  
For: CONTROLLING RESONANT  
PHOTOELASTIC MODULATORS

DECISION

ON PETITION UNDER

37 CFR 1.8

This is a decision on applicant's "Submittal Under 37 CFR 1.8(b) Concerning Timely Filed Correspondence Not Received In the US Patent and Trademark Office," filed on 10 September 2001. No petition fee is required.

**BACKGROUND**

On 08 September 2000, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the basic national fee and an unexecuted declaration.

On 18 October 2000, the Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that oath or declaration executed by the inventor was required and a Notification of a Defective Oath or Declaration (Form PCT/DO/EO/917) indicating that the current oath or declaration was not executed in accordance with either 37 CFR 1.66 or 1.68. The notification set a ONE (1) MONTH period for response.

On 11 June 2001, the Office mailed a Notification of Abandonment (Form PCT/DO/EO/909) indicating, that the application went abandoned for failure to respond to the Notification of Missing Requirements mailed 18 October 2000.

On 10 September 2001, applicant filed the present petition requesting that the Office withdraw the holding of abandonment as the applicant had timely replied to the Notification of Missing Requirements. The petition was accompanied by copies of the cover letter and of the combined declaration and power of attorney alleged to have been mailed 13 November 2000.

On 26 February 2002, applicant submitted a second copy of the 10 September 2001 submission and a cover letter.

### DISCUSSION

The 13 November 2000 mailing is not present in the file. However, 37 CFR 1.8(b) states, in part:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission.

Items (1), (2), and (3) have been met. Applicant filed the petition within two months of the mailing of the Notification of Abandonment. Applicant supplied a copy of the declaration and the cover letter with the certificate of mailing. Mr. Hughey signed the 13 November 2000 submission, the certificate of mailing and the 10 September 2001 submission. In the 10 September 2001 submission, Mr. Hughey states that he has first hand knowledge that the original submission was mailed.

The surcharge for late filing of the oath or declaration will be charged to deposit account no. 50-0241, as authorized by the 08 September 2000 transmittal letter.

### CONCLUSION

For the above reasons, applicant's petition under 37 CFR 1.8 to withdraw the holding of abandonment is GRANTED.

The Notification of Abandonment mailed on 11 June 2001 is hereby VACATED.

The application has an international filing date of 16 March 1999 under 35 U.S.C. 363, and a 35 U.S.C. 371(c) date of 10 September 2001. This application is being forwarded to the National Stage Processing Branch of the International Division for further processing.



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